IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATA TREASURY CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**NO. 2:06-CV-72**
	§	
WELLS FARGO & COMPANY, et al.,	§	
	§	
Defendants.	§	
	§	

ORDER

Before the Court is the Joint Motion of Defendants to Dismiss, or in the Alternative, For More Definite Statement (Doc. No. 80) (hereafter "the Joint Motion"). Through various motions, the majority of Defendants have joined in the Joint Motion as the Plaintiff's complaint relates to them individually. *See* Doc. Nos. 82, 86, 87, 88, 89, 90, 91, 92, 93, 96, 97, 98. Also before the Court are the relevant responses and replies by the parties related to Defendants' Joint Motion. After reviewing the briefing and the relevant law, the Court hereby DENIES Defendants' Joint Motion.

I. BACKGROUND

The above referenced case is one of several brought by Plaintiff Datatreasury Corporation against various member of the banking industry. Plaintiff first filed its complaint on February 24, 2006. On March 28, 2006, Plaintiff filed its First Amended Complaint adding an additional defendant. In sum, the First Amended Complaint alleges that fifty-six Defendants infringe six patents purportedly held by Plaintiff. *See* Doc. No. 3 at 2-25. The First Amended Complaint

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places the Defendants into groups, namely: (1) owners and users of Viewpoint Archive Services, LLC, referred to as the "Viewpointe Defendant Group;" and (2) owners and users of "Small Value Payments Company, LLC or The Clearing House Payments Company, referred to as the "SVPCo/Clearing House Defendant Group."

Only one Defendant, Magtek, Inc., has filed an answer to Plaintiff's First Amended Complaint. All other Defendants have either joined in the Joint Motion to dismiss Plaintiff's complaint or have filed their own motions under Rule 12 of the Federal Rules of Civil Procedure ("hereafter referred to as "Rule 12 "). The Joint Motion moves to dismiss the First Amended Complaint for failure to state a claim under Rule 12(b)(6), or alternatively, for a more a more definite statement under Rule 12(e).

II. LEGAL STANDARD

In patent cases such as this, Federal Circuit precedent typically controls regarding patent law issues. *See Midwest Indust., Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356, 1359 (Fed. Cir. 1999). However, "with respect to nonpatent issues" this Court should "apply the law of the circuit in which the [it] sits." *See id.* As a result, Fifth Circuit law provides the basis for review of the First Amended Complaint.

Rule 12(b)(6) authorizes defendants to test the legal sufficiency of a complaint by filing a motion to dismiss on the grounds that the complaint fails to state a claim upon which relief can be granted. *See* FED. R. CIV. P. 12(b)(6). The Court may grant a 12(b)(6) motion only "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The Court thus accepts as true all well-pleaded factual allegations and views them in the light most favorable to the plaintiff. *See Associated General Contractors v. California State Council of Carpenters,* 459 U.S. 519, 525 (1983). Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must include only a "short and plain statement of the claim" whose purpose is to give defendant fair notice of the nature and substance of the claim. *See Conley,* 355 U.S. at 45.

"A motion to dismiss under Rule 12(b)(6) 'is viewed with disfavor and is rarely granted'" *Lowrey v. Texas A&M University System,* 117 F.3d 242, 247 (5th Cir. 1997). This strict standard applied to 12(b)(6) motions is not, however, without its limits. In order to survive a 12(b)(6) motion, a complaint must state either direct or inferential allegations concerning all of the material elements necessary for recovery under the relevant legal theory. *See In re Plywood Antitrust Lit.,* 655 F.2d 627, 641 (5th Cir.1981), *cert. dismissed,* 462 U.S. 1125 (1983). Moreover, the Court will not assume facts that the plaintiff has not alleged and is not required to accept the legal conclusions either alleged or inferred by the plaintiff from the facts pled. *McCormack v. NCAA,* 845 F.2d 1338, 1343 (5th Cir.1988). Alternatively, if a complaint is merely ambiguous or does not contain sufficient information to allow a responsive pleading to be framed, the proper remedy is a motion for a more definite statement under Rule 12(e). *See Sisk v. Texas Parks and Wildlife Dept.,* 644 F.2d 1056, 1058 (5th Cir.1981); *see also* 5 C. Wright & A. Miller, Federal Practice and Procedure Civil § 1356 at 296-297 (1990).

III. DISCUSSION

(A) Summary of Argument

In the Joint Motion, Defendants argue that in a patent infringement case such as this the plaintiff must outline a viable claim for relief. *See* Doc. No. 80 at 4. Defendants cite a Southern District of California decision, *Gen-Probe, Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948 (S.D.

Cal. 1996), for the principle that a complaint fails to provide fair notice where it is unclear which defendant committed which type of infringement. *See* Doc. No. 80 at 5. Specifically, Defendants argue that Plaintiff's Amended Complaint fails to meet the requirements of Rule 8 because it "(1) fail[s] to define the Defendants' allegedly infringing contacts with SVPCo./VAS; (2) do[es] not specify whether the Defendants allegedly infringe the patents-in-suit as either an SVPCo./VASS owner or user; (3) do[es] not define SVPCo./VAS's allegedly infringing activity; and (4) do[es] not describe the Defendants' allegedly infringing activity." *See id.* at 7. As a result, Defendants move the Court to either dismiss the amended complaint or order the Plaintiff to file a more definite statement under Rule 12(e).

Plaintiff responds that it has met the pleading requirements established by the Federal Rules and that a more definite statement is not necessary. *See* Doc. No. 167 at 5. Plaintiff asserts that *Gen-Probe* is not binding or persuasive, and that the Federal Circuit's decision in *Phonometrics, Inc. v. Hospitality Franchise Sys. Inc.*, accurately establishes that pleading requirements in patent cases are nothing more than those required by the Federal Rules of Civil Procedure. *See id.* at 7. Plaintiff asserts that its complaint provides fair notice to the Defendants and, therefore, the Court should deny their motion to dismiss. *Id.* In addition, Plaintiff argues that the Court should deny the Defendants' alternative motion for a more definite statement because, quite simply, they assert Rule 12(e) is not a substitute for discovery procedures.

(B) Analysis

(1) Defendants' Joint Motion under Rule 12(b)(6)

While Fifth Circuit law controls, the Court notes that the Federal Circuit handled an analogous situation in *Phonometrics, Inc. v. Hospitality Franchise Systems, Inc.*, 203 F.3d 790

(Fed. Cir. 2000). Applying Eleventh Circuit law, the Federal Circuit found that the plaintiff's complaint was sufficient for Rule 12(b)(6) purposes because it "allege[d] ownership of the asserted patent, names each individual defendant, cites the patent that is allegedly infringed, describes the means by which the defendants allegedly infringe, and points to the specific sections of the patent law invoked." *See id.* at 794. The Eleventh Circuit precedent relied on in *Phonometrics* is highly similar to the Fifth Circuit precedent that controls here. *Compare Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) ("[T]he 'accepted rule' for appraising the sufficiency of a complaint is 'that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'") (quoting *Conley*, 355 U.S. at 45-46), *with Walker v. S. Central Bell Telephone Co.*, 904 F.2d 275, 277 (5th Cir. 1990) ("The appellant's inartful pleadings do not contain an explicit statement to that effect but it 'does not appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'") (quoting *Conley*, 355 U.S. at 45-46); *cf. Phonometrics*, 203 F.3d at 794 (citing *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364 (11th Cir. 1997)). Given the similarity between the Fifth Circuit and Eleventh Circuit rules, and the similarities of the facts in this case and those before the Federal Circuit, the Court finds the *Phonometrics* decision instructive.

Like *Phonometrics*, the Plaintiff's complaint in this case alleges that Plaintiff owns each asserted patent and names each defendant. In addition, each count of the complaint cites the allegedly infringed patent and describes the means in which each Defendant, or groups of Defendants, allegedly infringes the patent. Given Fifth Circuit precedent and the Federal

Circuit's *Phonometrics* decision, the allegations in the complaint are sufficient to give Defendants fair notice of Plaintiff's claims. As a result, it is not evident "beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." *See Conley*, 355 U.S. at 45-46. Thus, dismissal under Rule 12(b)(6) is not appropriate here.

(2) Defendants' Joint Motion under Rule 12(e)

Defendants alternatively move for a more definite statement under Rule 12(e). That rule provides: "If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading." Fed R. Civ. Pro. 12(e). As a result, the Court considers whether the First Amended Complaint fails to contain sufficient information to allow a responsive pleading to be framed.

Defendants' argue that the complaint fails to give fair notice because each count alleges three causes of action—direct infringement, contributory infringement, and inducement. *See* Doc. No. 80 at 10 (adopting the arguments set forth in its 12(b)(6) motion). Relying on *Gen-Probe*, Defendants allege that Plaintiff's "shot-gun" approach fails to meet the requirements of Rule 8 and fails to give notice whether they have been accused of direct infringement, contributory infringement, or inducement. Next, Defendants complain that each count in Plaintiff's Amended Complaint alleges that the Defendants' "products and services" infringe the related asserted patent. Defendants argue that the description of "products and services" as the means of infringement does not provide enough detail to suffice under the Federal Rules of Civil Procedure. *See* Doc. No. 186 at 3. The Court finds both arguments unpersuasive.

First, Defendants' reliance on *Gen-Probe* is misplaced. Even if *Gen-Probe* were controlling here, that case predates the *Phonometrics* decision. In addition, *Gen-Probe* does not purport to create a general rule requiring each claim to exist under a separate account. *See OKI Elec. Ind. Co. v. LG Semicon Co.*, 1998 WL 101737 (N.D. Cal. Feb. 25, 1998) (not reported in F. Supp.). Instead, the *Gen-Probe* court was merely addressing the organizational deficiencies of the specific complaint before it.

Furthermore, Defendants' argument that the use of "products and services" is insufficient to give fair notice is inconsistent with the cornerstone of the federal notice-pleading system. Modern rules merely require the complaint to given fair notice of the substance of an opposing parties claim. *See Conley*, 355 U.S. at 45. For this very reason, a motion for a more definite statement is generally disfavored, and the pre-trial issue-framing function is shifted to the discovery process. *Charles E. Beard, Inc. v. Cameronics Tech. Corp.*, 120 F.R.D. 40, 41 (E.D. Tex. 1988); *see also J&J Mfg. Inc. v. Logan*, 24 F. Supp. 2d 692, 703 (E.D. Tex. 1998). In patent cases, this process is even further honed by the local patent rules. Those rules provide for disclosure of asserted claims and preliminary infringement contentions in order for the parties to identify the issues involved in a plaintiff's claim. *See* P. R. 3-1. Discovery has begun in this case and Plaintiff has served Defendants with preliminary infringement contentions. *See* Doc. No. 393. In addition, the fact that Defendant Magtek was able to craft a simple answer and proceed forward evidences the willingness of at least one Defendant to file a responsive pleading and to begin the discovery process. *See* Doc. No. 57. As a result, Defendants motion for a more definite statement would serve little purpose and could possibly delay the on going discovery process.

CONCLUSION

In light of the foregoing discussion, the Court ORDERS:

That Defendants' joint motion to dismiss the First Amended Complaint is DENIED;

That Defendants' joint alternative motion for a more definite statement is DENIED.